UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Owen	Group Art Unit:	3683
Serial No.:	10/680,986	Examiner:	Siconolfi, R
Filed:	10/08/2003		
Title:	***STABILIZER BAR LATERAL RETAINER COLLAR***		

Commissioner for Patents
Mail Stop Appeal Brief-Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Appellant submits this Appeal Brief pursuant to the Notice of Appeal filed 7-2-2007.

I. REAL PARTY IN INTEREST

The real party in interest is **ArvinMeritor Technology LLC** assignee of the present invention.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings related to, may directly affect or may be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 27-40 are pending, rejected and appealed.

Claim 1-26 were canceled.

IV. STATUS OF AMENDMENTS

All amendments have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

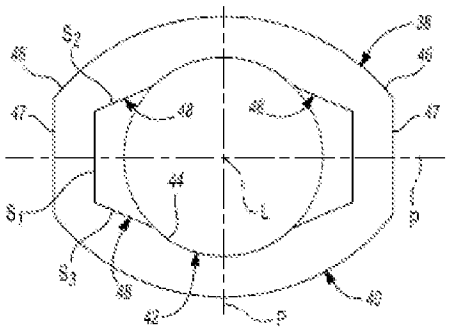


Fig-3

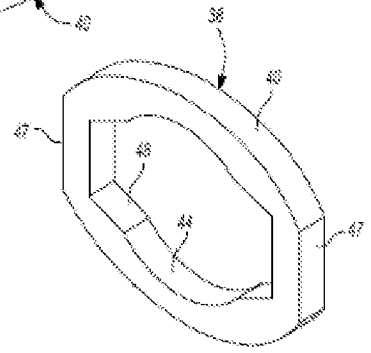


Fig-4

Summary of Claim 27

Referring in part to Figures 3 and 4, Claim 27 recites an anti-shift collar 38 having an elliptical outer perimeter 40, a first clipped end 47 and a second clipped end 47 formed in the elliptical outer perimeter 40, and an inner perimeter 48 including a semi-circular inner perimeter portion 40, and a first polygonal inner perimeter portion 48 and a second polygonal inner perimeter portion 48, the first polygonal inner perimeter portion 48 and the second polygonal inner perimeter portion 48 contiguous with the semi-circular inner perimeter portion 40, the first polygonal inner perimeter portion 48 and the second polygonal inner perimeter portion 48 formed respectively adjacent the respective first clipped end 47 and second clipped end 47. [See page 3, lines 22-29, ¶¶19, 20.]

Summary of Claim 31

Referring in part to Figures 3 and 4, in addition to Claim 27, Claim 31 recites that the polygonal inner perimeter portions 48 each include a first surface S1, a second surface S2 and a third surface S3, the second surface S2 and the third S3 surface non-perpendicular with the first surface S1. [See ¶20.5 insert, pages 3-4.]

Summary of Claim 34

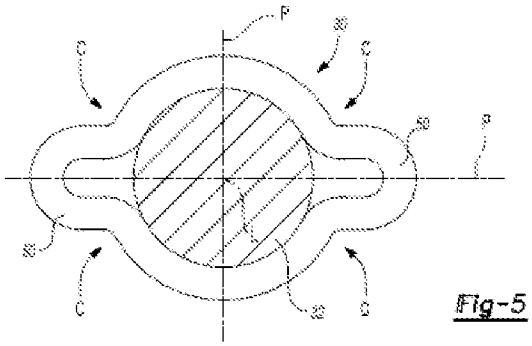


Fig-5

Referring in part to Figures 3, 4 and 5, Claim 34 recites a method of mounting a stabilizer bar 34 comprising the steps of: sliding an anti-shift collar 38 over a stabilizer bar 34, the anti-shift collar 38 having the first polygonal inner perimeter portion 48 and the second polygonal inner perimeter portion 48 contiguous with the semi-circular inner perimeter portion 40, the first polygonal inner perimeter portion 48 and the second polygonal inner perimeter portion 48 formed respectively adjacent the first clipped end 47 and the second clipped end 47; crimping the anti-shift collar 38 simultaneously in four locations C upon the elliptical outer perimeter 40; and forming a first pinched area 50 from the first polygonal inner perimeter portion 48 and the first clipped end 47 and a second pinched area 50 from the second polygonal inner perimeter portion 48 and the second clipped end 47, the first pinched area 50 and the second pinched area 50 extending outward along a longitudinal axis P to retain the anti-shift collar 38 on the stabilizer bar 34. [See page 4, lines 3-12 (¶21).]

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 27-40 stand rejected under 35 USC §102(b) as being anticipated by JP 2001301437.

VII. ARGUMENT

35 U.S.C. §102(b) REJECTIONS

Claims 27-40 stand rejected under 35 USC §102(b) as being anticipated by JP 2001301437.

I. APPELLANT HAS NOT RECEIVED AN ENGLISH TRANSLATION

Claims 27-40

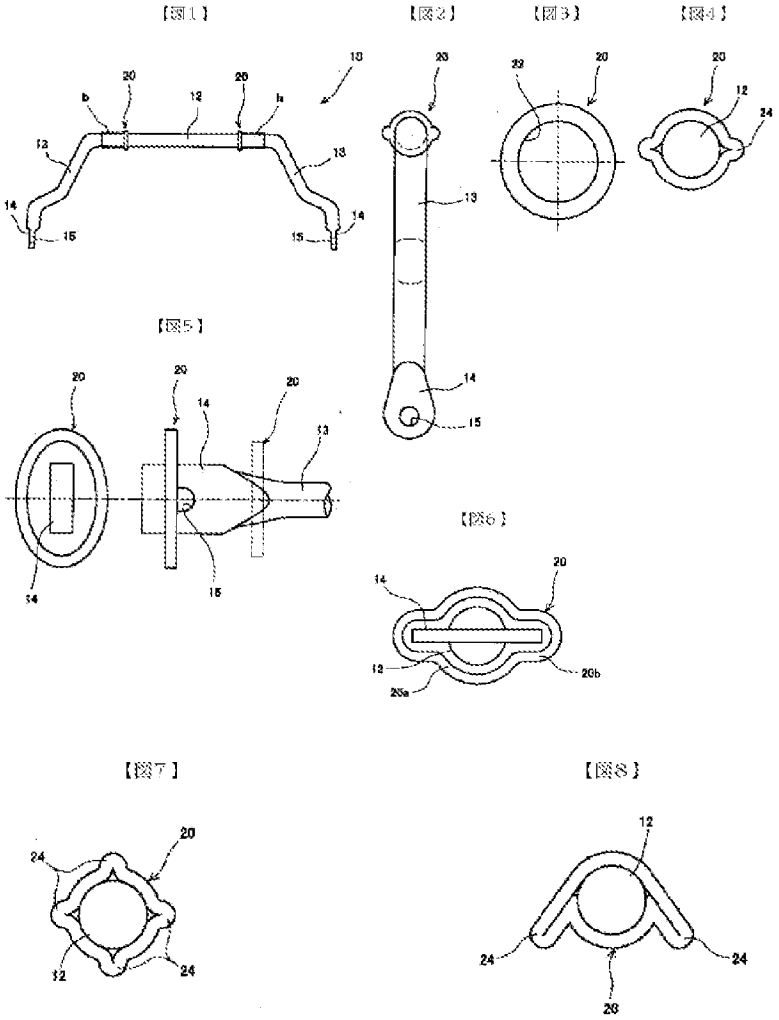
The JP 2001301437 English Abstract is reproduced below:

STABILIZER FOR AUTOMOBILE

Abstract:

Abstract of JP2001301437

PROBLEM TO BE SOLVED: To simplify the shape of a positioning body of a stabilizer for an automobile. SOLUTION: A linear part 12, a curved part, and a circular insertion hole capable of loosely inserting a flat part of a stabilizer main body are formed in the positioning body 20. The positioning body 20 is crimped to the linear part 12 of the stabilizer main body in a state that a projecting part 24 is formed in one or more portions on the circumference of a circle.



An abstract and the underlying document of which it is a summary are distinct documents. In a rejection, an abstract stands on its own--it does not incorporate by reference any disclosure of the underlying document. Abstracts are often not written by the author of the underlying document, and may be erroneous or misleading--in virtually all cases, they are incomplete.

Generally an abstract does not provide enough information to permit an objective evaluation of the validity of what it describes. Thus, an abstract is even less reliable a basis to extrapolate the alleged teachings of the underlying document to different circumstances. Abstracts function to alert a reader to disclosures of possible interest. They are little more reliable than headlines or brief newspaper articles.

Citation of an abstract without citation and reliance on the underlying scientific document itself is generally inappropriate where both the abstract and the underlying document are prior art. It is our opinion that a proper examination

> *under 37 CFR Section 1.104 should be based on the underlying documents and translations, where needed. Accordingly, the preferred practice is for the examiner to cite and rely on the underlying document.*
>
> See Ex parte Gavin, 62 U.S.P.Q.2D (BNA) 1680

Furthermore see MPEP 706.02.II (in pertinent part):

> *To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection.*

The exceedingly minimal abstract prevents an objective evaluation of the validity of what it purports to describe. Appellant respectfully requests that the Examiner make clear as to whether the examiner is relying upon the abstract or the full text document to support the rejection as well as obtain a translation to substantiate the rejection or retract the rejection and allow the application.

Without a translation, the exceedingly minimal abstract Appellant did not have an opportunity to further refute the Examiner's contention. Appellant requests that the prosecution be reopened such that the Examiner may obtain a translation to substantiate the rejection or retract the rejection as Appellant has not been provided with the proper opportunity for response..

II. JP 20013001437 ABSTRACT RELIANCE

Claims 27-40

If the Examiner is relying upon the abstract From the Figures, JP 20013001437 appears to be manufactured of wire that is square in cross-section. Such a wire inherently fails to disclose or suggest at least the: elliptical outer perimeter; first clipped end; second clipped end; and semi-circular/polygonal inner perimeter portion limitation recited in Appellant's claims. JP 2001301437 simply cannot meet at least these limitations.

All claims are properly allowable for this reason alone.

III. LIMITATIONS OF INDEPENDENT CLAIMS

Each of the independent claims are properly allowable as JP 2001301437 simply cannot meet at least these limitations.

CLAIMS 27 AND 31

A. Claims Directed To The Anti-Shift Collar Prior To A Crimping Operation

The JP 2001301437 abstract only discloses that "the positioning body 20 is crimped to the linear part 12 of the stabilizer main body in a state that a projecting part 24 is formed in one or more portions on the circumference of a circle." Contrary to the Examiner's annotated figure, Appellant's independent claims 27 and 31 along with the dependent claims are directed to the anti-shift collar prior to a crimping operation. Thus, even under the Examiner's expansive interpretation, JP2001301437 fails to disclose or suggest an elliptical outer perimeter yet alone a first clipped and a second clipped end formed in said elliptical outer perimeter. Each of the claims is therefore allowable for this reason alone.

CLAIM 27

A. Elliptical Outer Perimeter; First Clipped End; And Second Clipped End Formed In Said Elliptical Outer Perimeter Limitations

Claim 27 recites an elliptical outer perimeter; a first clipped end and a second clipped end formed in said elliptical outer perimeter. JP 20013001437 appears to be manufactured of wire and even if the Examiner is relying upon figure 5 to illustrate an elliptical outer perimeter, Figure 5 simply fails to disclose a clipped end. Claim 27 is properly allowable.

CLAIM 31

A. Elliptical Outer Perimeter; Inner Perimeter With Semi-Circular And Polygonal Inner Perimeter Portion Limitations

Claim 31 recites an elliptical outer perimeter with an inner perimeter including a semi-circular inner perimeter portion, a first polygonal inner perimeter portion and a second polygonal inner perimeter portion, said first polygonal inner perimeter portion and said second polygonal inner perimeter portion contiguous with said semi-circular inner perimeter portion. Claim 31, cannot be anticipated by JP 20013001437 as JP 20013001437 fails to disclose an inner perimeter with any geometric configuration – since JP 20013001437 appears to be wire – and certainly cannot disclose an inner perimeter having a first polygonal inner perimeter portion and said second polygonal inner perimeter portion contiguous with said semi-circular inner perimeter portion.

B. Polygonal Inner Perimeter Portion Limitations

Claim 31 also specifically recites that each polygonal inner perimeter portions 48 includes a first surface S1, a second surface S2 and a third surface S3, the second surface S2 and the third S3 surface non-perpendicular with the first surface S1. Claim 31, cannot be anticipated by JP 20013001437 as JP 20013001437 fails to disclose such surface either before OR after crimping.

CLAIM 34

A. Elliptical Outer Perimeter; First Clipped End; Second Clipped End Formed In Said Elliptical Outer Perimeter Limitations

Claim 34, like claim 27 cannot be anticipated by figure 5 of JP 20013001437 as Figure 5 simply fails to disclose clipped ends.

B. Crimping Limitation

Claim 34 recites in step (2) "crimping the anti-shift collar simultaneously in four locations." No such *simultaneous* crimping is disclosed or suggested by JP 2001301437.

VIII. CONCLUSION

For the above reasons, the rejections by the Examiner should be reversed. The Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds, P.C. the $500 appeal brief filing fee and $120 one month extension fee, along with any additional fees or extensions that may be required.

Respectfully Submitted,

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Dated: September 11, 2007

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CLAIMS APPENDIX

27. An anti-shift collar comprising:

an elliptical outer perimeter;

a first clipped end and a second clipped end formed in said elliptical outer perimeter; and

an inner perimeter including a semi-circular inner perimeter portion, and a first polygonal inner perimeter portion and a second polygonal inner perimeter portion, said first polygonal inner perimeter portion and said second polygonal inner perimeter portion contiguous with said semi-circular inner perimeter portion, said first polygonal inner perimeter portion and said second polygonal inner perimeter portion formed respectively adjacent said respective first clipped end and second clipped end.

28. The anti-shift collar as recited in claim 27, wherein said first polygonal portion and said second polygonal portion each include a first surface with a component respectively parallel to said first clipped end and a second clipped end.

29. The anti-shift collar as recited in claim 28, wherein said first polygonal portion and said second polygonal portion each include a second surface and a third surface non-perpendicular with said first surface.

30. The anti-shift collar as recited in claim 28, wherein said semi-circular portion is defined about a central longitudinal axis, said first surface normal tangential to said semi-circular portion

31. An anti-shift collar comprising:

an elliptical outer perimeter; and

an inner perimeter including a semi-circular inner perimeter portion, a first polygonal inner perimeter portion and a second polygonal inner perimeter portion, said first polygonal inner perimeter portion and said second polygonal inner perimeter portion contiguous with said semi-circular inner perimeter portion, said first polygonal inner perimeter portion and said second polygonal inner perimeter portion each include a first surface, a second surface and a third surface, said second surface and said third surface non-perpendicular with said first surface.

32. The anti-shift collar as recited in claim 31, wherein said second surface and said third surface are non-parallel to a longitudinal axis of the anti-shift collar, said longitudinal axis defined through a center of a circle formed by said semi-circular inner perimeter portion.

33. The anti-shift collar as recited in claim 31, further comprising a first clipped end a said second clipped end formed in said elliptical outer perimeter.

34. A method of mounting a stabilizer bar comprising the steps of:

(1) sliding an anti-shift collar over a stabilizer bar, the anti-shift collar having an elliptical outer perimeter, a first clipped end and a second clipped end formed in the elliptical outer perimeter, an inner perimeter including a semi-circular inner perimeter portion, a first polygonal inner perimeter portion and a second polygonal inner perimeter portion, the first polygonal inner perimeter portion and the second polygonal inner perimeter portion contiguous with the semi-circular inner perimeter portion, the first polygonal inner perimeter portion and the second polygonal inner perimeter portion formed respectively adjacent the first clipped end and the second clipped end;

(2) crimping the anti-shift collar simultaneously in four locations upon the elliptical outer perimeter; and

(3) forming a first pinched area from the first polygonal inner perimeter portion and the first clipped end and a second pinched area from the second polygonal inner

perimeter portion and the second clipped end, the first pinched area and the second pinched area extending outward along a longitudinal axis to retain the anti-shift collar on the stabilizer bar.

35. A method as recited in claim 34, wherein said step (2) further comprises:

(a) directing the crimps generally transverse to the stabilizer bar and not toward a central longitudinal axis of the stabilizer bar.

36. A method as recited in claim 34, wherein said step (2) further comprises:

(a) directing the crimps to take-up a clearance of the first polygonal inner perimeter portion and the second polygonal inner perimeter portion.

37. A method as recited in claim 34, wherein said step (1) further comprises:

(a) sliding the anti-shift collar over the stabilizer bar such that the first polygonal inner perimeter portion and the second polygonal inner perimeter portion pass over a formed ends of the stabilizer bar.

38. The anti-shift collar as recited in claim 27, wherein said second surface and said third surface are non-parallel to a longitudinal axis of the anti-shift collar, said longitudinal axis defined through a center of a circle formed by said semi-circular inner perimeter portion.

39. The anti-shift collar as recited in claim 38, wherein said anti-shift collar is a generally planar member transverse to said longitudinal axis.

40. The anti-shift collar as recited in claim 39, wherein said anti-shift collar is generally a flat plate.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

EVIDENCE APPENDIX

None.